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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,150	12/29/2000	Stephan J. Jourdan	2207/7086	6534

23838 7590 02/08/2008

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ART UNIT	PAPER NUMBER
2181	

MAIL DATE	DELIVERY MODE
02/08/2008	PAPER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHAN J. JOURDAN, MICHAEL BEKERMAN,
RONNY RONEN, and LIHU RAPPOPORT

Appeal 2007-2467
Application 09/750,150
Technology Center 2100

Decided: February 8, 2008

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

I. STATEMENT OF THE CASE

Appellants appealed under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-26. We affirmed in part. Pursuant to 37 C.F.R. § 41.52(a)(1), Appellants now request a rehearing of our Decision on Appeal

entered on October 29, 2007 affirming a rejection of appealed claim 18. We have jurisdiction under 35 U.S.C. § 6(b).

In the Request for Rehearing, Appellants contend that "the rejection of claim 18 as anticipated by Wang is lacking at least for the same reasons as those relating to claim 1" (Req. for Reh'g. 2). They request "that the Board of Patent Appeals and Interferences reverse the Examiner's decision rejecting the aforementioned claim(s) (sic) and direct the Examiner to pass the case to issue" (*id.*).

37 C.F.R. § 41.37(c)(1)(vii) requires that in order to present a particular claim for individual consideration on appeal, Appellants must submit a separate argument under a separate subheading as to that claim. Specifically:

> Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. 41.37(c)(1)(vii). Furthermore, requests for rehearing are controlled by 37 C.F.R. § 41.52(a)(1), including the requirement that the "request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board."

Here, Appellants argued claims 1-26, which are subject to the same ground of rejection, as a group, as mentioned in our original opinion (Decision On App. 4). However, Appellants presented arguments only for claim 1, which is not the broadest claim (*id.*). Appellants' arguments were inapplicable to independent claims 13, 19, and 24, each of which is broader than claim 1. Therefore, claims 13-26 were separated by the Board as an independent group. We properly selected claim 1 as the sole claim on which to decide the appeal of claims 1-12 and claim 13 as the sole claim on which to decide the appeal of claims 13-26.

Claim 18 depends from independent claim 13. When the patentability of dependent claims is not argued separately, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991 (Fed. Cir. 1983). Here, Appellants did not separately and specifically argue any of claims 13-26, and the Board thus correctly selected independent claim 13, the broadest claim, for deciding the appeal of claims 13-26. (*See* 37 C.F.R. § 41.37(c)(1)(vii)). Being "basically a board of review," *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001), we leave any further consideration of the patentability of claim 18 to the Examiner and Appellants.

In an *ex parte* appeal, moreover, the Board "is basically a board of review — we review . . . rejections made by patent examiners." *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). We lack authority to direct

an examiner to withdraw an Office action or to issue a Notice of Allowance. It is patent examiners who have the authority to withdraw their rejections, MPEP §§ 707.07(e), 1004, 1005, and to allow claims. *Id.* at §§ 1005, 1302.13; *See* MPEP § 1002.02(c) (noting that petitions involving examiners' refusals to enter amendments are decided by Technology Center Directors). Because we do not have jurisdiction over this matter, it is therefore not before us. *See* MPEP § 706.01 ("[T]he Board will not hear or decide issues pertaining to objections and formal matters which are not properly before the Board."). Therefore, we cannot perform the second part of the Appellants' request, viz., "direct[ing] the Examiner to pass the case to issue."

V. CONCLUSION

In summary, we deny the Appellants' request to reverse the rejection of claim 18 under § 102(b).

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

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